IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 3893 of 2006

Date of decision: 26.10.2006

Surinder Kaur

..... Petitioner.

Versus

Avtar Singh and another

..... Respondents.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. Ashish Aggarwal, Advocate
for the petitioner.

P.S. PATWALIA, J. (ORAL)

The present revision petition has been filed by the plaintiff against con-current findings recorded by the trial Court and the lower Appellate Court dismissing the application for temporary injunction filed by the plaintiff.

A reading of the facts as recorded by the Courts below would show that the plaintiff who is the widow of the son of defendant No.2 has based her claim on a release deed dated 07.03.2000. It is the case of the plaintiff that as per the said release deed the entire land measuring 44 kanals was released in her favour and she was in possession of the same. She contends that she is an illiterate lady and did not understand the contents of the release deed. However, it was only in the year 2003 when the contents were explained to her then she realized that 22 kanals of the

land was released in her favour and 22 kanals were released in favour of defendant No.2, who is son of sister-in-law of the plaintiff. She therefore filed a suit challenging that portion of the release deed whereby half portion of the land was released in favour of defendant No.2 and prayed for that part of the release deed to be set aside and for declaration that she is owner in possession of the entire area of 44 kanal. The defendants contested the suit. It is the case of the defendants that right from the day when the release deed was made the land had been transferred in equal shares in favour of the plaintiff and defendant No.2. It is the case of the defendants that defendant No.2 had been adopted by plaintiff and her husband Tehal Singh. It is therefore that defendant No.1, who is the father of Tehal Singh, deceased husband of the plaintiff had released 44 kanals in favour of both plaintiff and defendant No.2 in equal shares. It was further stated that the release deed is a registered document. The plaintiff was very well aware about the contents of the release deed. The present suit was filed by plaintiff at the behest of her daughters who wanted to usurp the entire property.

The lower Appellate Court while considering the matter has declined the injunction after noting that even if for the sake of arguments it was to be held that the release deed was invalid even then the title of the land would not be automatically transferred in favour of the plaintiff as in that situation the land would revert back to defendant No.1. Still further it was recorded that the plaintiff could not show prima facie that she is in possession of the entire land. Still further the court noted that the release deed was a registered document. Referring to an application for correction of khasra number, to which my attention was drawn by the learned counsel

for the petitioner, the lower Appellate Court has noted that suit was filed in the month of March 2003 whereas the application for correction was made after the filing of the suit. It is therefore the lower Appellate Court has declined the relief of the injunction with the following observations:-

> "The plaintiff has challenged the present release deed on the plea of fraud. The main plea of the plaintiff is that defendant/ respondent No.2 Jitender Singh was not the son of Tehal Singh i.e. her husband and he has been wrongly described as son of Tehal Singh in the said release deed in the written statement, respondents have pleaded that he was adopted by Tehal Singh but this fact cannot be lost sight of that plaintiff herself is partly to this release deed. It is further categorically mentioned in the plaint that the plaintiff was in possession of the said release deed and she kept it with her. Defendant No.1 has categorically pleaded in the written statement that the release deed in question was voluntarily executed by him in favour of the plaintiff and defendant no.2. The release deed in question is a registered document and the same has not been set aside so far by any competent court of law. For the sake of arguments, even if the release deed in favour of defendant No.2 is found to be invalid at the final stage of the suit it will not automatically convey the title of the share of defendant no.2 in favour of the plaintiff as that land will revert back to defendant No.1. Thus, the plea of the plaintiff that she has become owner in possession of the entire suit land measuring 44 kanals has

prima facie no force.

The plaintiff has also not been able to show that she is in exclusive possession of the suit property i.e. entire land measuring 44 kanals 0 marla. The khasra girdawari entries in favour of the plaintiff appellant have been corrected by ACIG vide order dated 20.04.2004. The present suit has been filed on 24.3.2003. The application for correction of khasra girdawari which is evident from the copy of Rapat Roznamcha Wakayati No.351 dated 18.5.2004, was filed on 7.10.2003 and was decided on 20.04.2004 i.e. The application for khasra girdawari was filed and decided in favour of the plaintiff during the pendency of the suit. Thus, the khasra girdawari entries in favour of the plaintiff has come during the pendency of the suit and even corrected, khasra girdawari entries does not depict that in what capacity the plaintiff is in possession of the entire land i.e. More than her ½ share given to her in the relinquishment deed. From the impugned relinquishment deed dated 7.3.00, it comes out that plaintiff and defendant no.2 have become co owner of the suit property and even if for the sake of arguments the relinquishment deed is declared to be invalid to the extent of share of defendant No.2, the ½ share of the suit land shall revert back to defendant No.1 and in that eventuality the plaintiff and defendant No.2 shall be co owner of the suit land. It is settled principle of law that a co-sharer is not entitled to seek injunction against the other co-sharer. There is only

one exception to the aforesaid general rule that a co-sharer in exclusive and established possession is entitled to protect his possession till partition. But in the instant case, as already mentioned, there is no prima facie evidence on file to established that plaintiff has ever remained in possession of the suit land prior to the relinquishment deed dated 7.3.2000. Even after the execution of the relinquishment deed dated 7.3.2000 plaintiff and defendant no.2 have been shown in joint possession of the suit land in the revenue record till the khasra girdawari entries were corrected in favour of the plaintiff vide order dated 20.04.2004. These khasra girdawari entries have been changed/corrected during the pendency of the suit, so their evidentiary value has to be judged on the merit of the case. Thus, in these circumstances, the plaintiff has failed prima facie to show that she was in exclusive possession of the suit property on the date of filing the suit. Consequently, she has no prima facie case in her favour.

The balance of convenience is also not in favour of the plaintiff and she is also not going to suffer any irreparable loss if the injunction is refused as the plaintiff has also acquired ownership in the suit land to the extent of ½ share of the total suit land measuring 44 kanals and she is challenging the same document in which she herself is beneficiary. The alienation, if any made during the pendency of the suit will also not cause any irreparable loss to the rights of the plaintiff as the said

alienation, if any shall be hit by the principle of lispendense. Thus, in these circumstances the learned trial court has rightly exercised the discretion in declining the relief of ad-interim injunction to the plaintiff appellant. Hence the discretion exercised by the learned trial court does not call for any interference by this Court. Consequently the present appeal has no merit and the same is hereby dismissed. However, no order as to costs."

I find no error in these findings recorded by the lower appellate Court warranting interference by way of this revision petition. The same is accordingly dismissed.

October 26, 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**